



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Security America Services, Inc.  
File: B-225469  
Date: January 29, 1987

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### DIGEST

1. Protest after bid opening that solicitation improperly called for evaluation of bids exclusive of option-year prices is dismissed as untimely where protest was not filed with contracting agency or General Accounting Office prior to bid opening.
2. Protest alleging that awardee was improperly found responsible by agency is dismissed since General Accounting Office will not review affirmative determinations of responsibility except in limited circumstances not present here. Moreover, mere fact that awardee has filed for bankruptcy under chapter XI of the United States Bankruptcy Code does not by itself require a finding of nonresponsibility.

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### DECISION

Security Ameica Services, Inc. (Security), protests the award of a contract for security services to Eccles Security Agency (Eccles), under invitation for bid bids (IFB) NO. C77001, issued by the Federal Home Loan Bank Board (FHLBB). Security alleges that the agency erred in its evaluation of bids and in finding Eccles responsible. We dismiss the protest.

The solicitation provided for the award of a contract for security services for the base period of November 1, 1986, through September 30, 1987. Thereafter, the contract could be extended through September of 1989 by the FHLBB's exercise of two separately priced 1-year options.

As issued, the solicitation incorporated by reference the clause appearing at the Federal Aquisition Regulation (FAR), 48 C.F.R. § 52.217-3 (1986), which states "[t]he Government will evaluate offers for award purposes by including only the price for the basic requirement; i.e., options will not be included in the evaluation for award purposes." Bids were

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opened as scheduled on October 27, and Eccles was the apparent low bidder with bids being evaluated as specified in FAR, 48 C.F.R. § 52.217-3. We note that the protester did not raise any objection to the inclusion of FAR, 48 C.F.R. § 52.217-3, in the solicitation either with the agency or with our Office prior to bid opening.

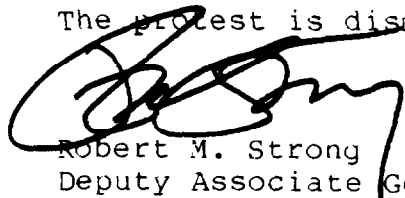
The protester first argues that bids should have been evaluated on the basis of the total of the base period price plus the price for both of the two option years. Had bids been evaluated in such a fashion, the protester would have been the low bidder. Consequently, it is the protester's position that the above-cited FAR provision was improperly included in the solicitation.

Our regulations require that protests based upon alleged improprieties that are apparent on the face of a solicitation be filed before bid opening. See 4 C.F.R. § 21.2(a)(1) (1986). In this case, the alleged impropriety was apparent on the face of the solicitation, the FAR provision having been incorporated by reference therein. Since Security did not protest this provision of the solicitation either with the contracting agency or this Office prior to bid opening, its protest on this basis is untimely and we will not consider it. See Norfolk Shipbuilding and Drydock Corp., B-218618, May 24, 1985, 85-1 C.P.D. ¶ 604. We therefore dismiss this basis of protest.

Security argues secondly that the agency erred in affirmatively finding the awardee under this solicitation, Eccles, responsible, because Eccles has filed for bankruptcy under chapter XI of the United States Bankruptcy Code.

This Office will not review an affirmative determination of responsibility, which is largely a business judgment, unless the protester, which bears the burden of proving its case, shows possible fraud or bad faith on the part of procurement officials, or the solicitation contains definitive responsibility criteria that allegedly have not been applied. See 4 C.F.R. § 21.3(f)(5). Since neither of these exceptions applies to the instant case, we will not review the determination of responsibility upon the merits. See James S. Scroggins to Co., B-213363, Apr. 17, 1984, 84-1 C.P.D. ¶ 429. In any event, the mere fact that a contractor is undergoing bankruptcy does not require a finding of nonresponsibility. See Id. and cases cited therein. We therefore dismiss this basis of protest.

The protest is dismissed.



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Deputy Associate General Counsel